TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 787

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF SEABOARD AIR LINE RAILWAY COMPANY, PETITIONER,

vs.

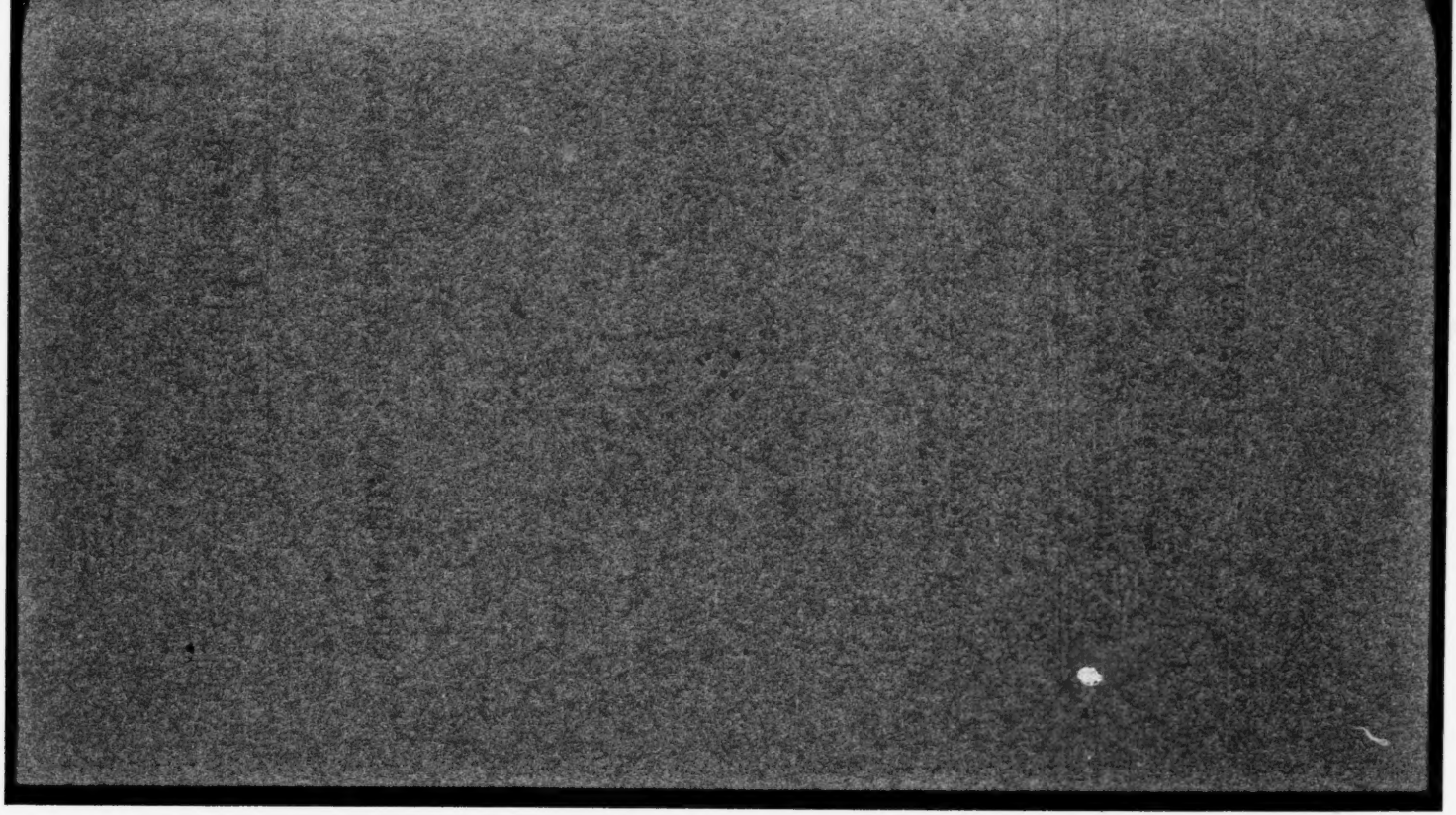
E. H. PRINGLE, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF CHARLES F. BOYD COMPANY, INC., BANKRUPT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 22, 1924

CERTIORARI GRANTED MARCH 2, 1925

(30,752)



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[fol. 1] **IN UNITED STATES DISTRICT COURT**

CAPTION

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina:

IN THE DISTRICT COURT, TO-WIT, IN BANKRUPTCY

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Columbia, S. C., on the third Tuesday of January, being the fifteenth day of the same month in the year of our Lord, one thousand nine hundred and twenty-four.

Present: The Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina, presiding at Columbia, S. C., and the Honorable Henry A. M. Smith, United States Judge, presiding at Charleston, S. C.

Among other were the following proceedings, to-wit:

In the Matter of CHARLES F. BOYD COMPANY, INC., Bankrupt

Ex Parte JAMES C. DAVIS, Federal Agent, for Claims Due in Operation of Seaboard Air Line Railway Company

IN UNITED STATES DISTRICT COURT

PROOF OF DEBT DUE CORPORATION—Filed Sept. 28, 1920

At Portsmouth, Virginia, in the Eastern District of Virginia on the 23rd day of September, A. D. 1920 came T. W. Mathews, of Portsmouth, in the County of Norfolk and State of Virginia and [fol. 2] made oath, and says that he is Assistant Treasurer of Seaboard Air Line Railway Company, a corporation incorporated by and under the laws of the State of South Carolina and carrying on business at Charleston, South Carolina, and that he is duly authorized to make this proof, and says that the said Charles F. Boyd & Company the person by (or against) whom a Petition for Adjudication of Bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of Two Thousand Two Hundred and Seven 43/100 Dollars; that the consideration of said Debt is as follows: Freight, Storage and demurrage on shipments of ground hulls from Willich & Company, New Orleans, La., to Charles F. Boyd & Company, that no part of said debt has been paid, that there are no set-offs or counter claims to the same and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security

for said debt whatever, and that no note has been received for said debt and no judgment rendered thereon.

T. W. Mathews, Asst. Treas. of said Corporation.

(Verified.)

LETTER OF BUIST & BUIST, DISTRICT COUNSEL, TO L. K. LEGGE, REFEREE, DATED FEBRUARY 6, 1922

DEAR SIR: During the course of the administration of the Boyd Bankrupt Estate we filed with you claims in behalf of the Director General of Railroads. The General Solicitor of the Railroad Administration has directed us to call to your attention section 3466 of the Revised Statutes of the United States, providing for a preference to claims due to the United States in bankruptcy proceedings.

In the case of in re Hibner 264 F. 667, it is decided that a claim [fol. 3] in behalf of the Director General comes within the purview of this Statute.

We respectfully request that the claim in question should be listed among those entitled to preference.

Yours very truly, Buist & Buist, District Counsel Seaboard Air Line Railway Company, Charleston, S. C.

IN UNITED STATES DISTRICT COURT

ORDER OF LIONEL K. LEGGE, SPECIAL REFEREE—Filed August 21, 1922

On August 20th, 1920, Charles F. Boyd Company, Inc., was adjudicated Bankrupt. On February 23rd, 1921, John Barton Payne, Federal Agent, filed in the cause two claims for freight, storage and demurrage earned by the Atlantic Coast Line Railroad, as follows:

(a) Claim for demurrage accruing on and between April 19, 1918, and June 10th, 1918—$1,883.87.

(b) Claim for freight, storage and demurrage accruing on and between April 29th, 1918 and August 27th, 1918—$329.83.

These claims were filed as unsecured claims in the usual form, duly itemized, and no claim for priority as to them was made at that time.

On September 28th, 1920, there was filed on behalf of the Seaboard Air Line Railway a proof of unsecured claim for "Freight, storage and demurrage on shipment of ground hulls from Willich & Co., New Orleans, La., to Charles F. Boyd & Co.," in the amount of $2,207.43. This claim was not itemized other than stated. On February 6th, 1922, counsel for the Seaboard Air Line Railway Company requested by letter that the claim last above referred to

be listed as entitled to priority under Section 3466 of the Revised [fol. 4] Statutes of the United States. Thereafter on February 9th, 1922, counsel for James C. Davis, Federal Agent, filed a notice of the appointment of James C. Davis as Federal Agent in the place of John Barton Payne, and also to the effect that the claims theretofore filed in the name of John Barton Payne, and first above referred to, were entitled to priority as debts due the United States.

After due notice a hearing was held before me on May 29th, 1922, at which time the attention of counsel representing the claim of Seaboard Air Line Railway Company was directed to the fact that the claim as filed made no mention of the date or dates of its accrual, and that there was, therefore, nothing in the record to show that this claim had accrued during the period of Federal control.

The hearing was thereupon adjourned in order that counsel might file such amended proofs of Claim and Petitions for priority as they might be advised.

Subsequently, on July 27th, 1922, there was filed on behalf of James C. Davis, Federal Agent, a Petition for priority as to the two claims first above referred to, as accruing during the period of Federal control of the lines of the Atlantic Coast Line Railroad Company. On August 2nd, 1922, I notified counsel for the Seaboard Air Line Railway Company that more than two months had elapsed since the adjournment of the hearing on May 29th, for the purpose of enabling them to file an amended Proof of Claim, and requested that their claim be gotten in such shape as to be properly before me for a decision on the merits. No amended Proof of Claim has been filed however, and, as the record now stands, there is nothing to show when this claim accrued.

The sole question presented before me is whether, under the provisions of the Revised Statutes, Section 3466, and the Bankrupt Act of 1898, these claims are entitled to priority. So far as concerns the claims for freight, storage and demurrage accruing on the lines of the Atlantic Coast Line Railroad, it is admitted that these claims accrued during the period of Federal control. As to the claim for freight, storage and demurrage on the lines of the Seaboard Air Line Railway Company, there is as I have already stated, [fol. 5] nothing before me to show when the alleged indebtedness arose, and the claim for priority might very properly be dismissed for that reason. Realizing, however, that under the principle "nullum tempus occurrit regi," this claim may eventually be so amended as to show that it accrued during the period of Federal control, I shall so regard it for the purposes of this decision, as the present cause has been pending now for nearly two years and should, in the interest of all concerned, be terminated without further delay.

Prior to the Bankrupt Act of 1898, there was no doubt but that all claims of the United States, whether for taxes or otherwise, were entitled to priority, in view of the provisions of the Revised Statutes, Section 3466, and because of the further fact that the Federal Government was not bound by the then existing Bankruptcy Law.

Lewis vs. United States, 92 U. S. 618; United States vs. Herron, 20 Wall. 51; Harrison vs. Storey, 5 Cranch. 289; United States vs. Dallas, 140 U. S. 632; Redfield vs. Parks, 132 U. S. 239.

By the Bankrupt Act of 1898, however, the United States must, except as to claims for taxes, be considered as having assumed the position of a general creditor only. (Guarantee Title & Trust Co., Trustee, vs. Title Guaranty & Surety Co., 224 U. S. 152).

The question in the case last cited was as to the priority of payment out of a bankrupt estate of a claim due the United States on a Bond, and a claim for wages due a laborer. The Court considered the Act of March 3rd, 1797, Revised Statutes Sec. 3466) in its relation to the Bankrupt Acts of 1867 and 1898, and reached the conclusion that, while the Bankrupt Act of 1867 and the Act of March 3, 1797, (Revised Statutes, Section 3466) by both of which debts due the United States were given priority over all other claims, were in pari materia, the latter Act affirming the former, yet the Bankrupt Act of 1898 with its change of provisions regarding priority, was not in affirmation of Revised Statutes, Section 3466, and indicated a change of purpose in that respect. The Court held accordingly that, in spite of the provisions of Revised Statutes Section 3466, claims of the United States other than for taxes, are [fol. 6] since the Bankrupt Act of 1898, not entitled to priority over labor claims. In considering the effect of the provisions of Section 64 of the Bankrupt Act of 1898, the Court said:

"It will be seen therefore that by the Statute of 1797 (now Section 3466) and Section 5101 of the Revised Statutes all debts due to the United States were expressly given priority to the wages due any operative, clerk or house servant. A different order is prescribed by the Act of 1898 and something more. Labor claims are given priority and it is provided that debts having priority shall be paid in full. The only exception is 'taxes legally due and owing by the Bankrupt to the United States, State, County, District or Municipality.' These were civil obligations, not personal conventions, and preference was given to them, but as to debts we may assume a change of purpose in the change of Act. And we cannot say that it was inadvertent. The Act takes into consideration, we think, the whole range of the indebtedness of the Bankrupt, National, State and individual, and assigns the order of payment. The policy which dictated it was beneficent, and well might induce a postponement of the claims even of the sovereign in favor of those who necessarily depend upon their daily labor. And to give such claims priority could in no case seriously affect the sovereign. To deny them priority would in all cases seriously affect the claimants."

So in the case of Lott vs. Salsbury, 237 Federal 191, the Circuit Court of Appeals for the Fourth Circuit, referring to the above decision says:

"The United States, except for taxes due, has not, in the enactment of the Bankruptcy Law, exercised its sovereign right of pro-

viding a preference, for its own claims against the Bankrupt * * *. The Government has, except as to taxes, put itself in the plight of an ordinary unsecured creditor."

See also In re: Jacobson, 263 Fed. 881.

It would seem therefore, that no reliance can be placed by the United States upon Revised Statutes, Section 3466, in support of its [fol. 7] claim to priority, but that its claim to priority must be sustained, if at all, by the provisions of the Bankruptcy Act of 1898.

It is contended on the part of the government that these claims are entitled to priority under Revised Statutes, Section 3466, by virtue of subdivision 5 of Section 64 (b) of the Bankrupt Act of 1898 which gives priority to "debts owing to any person who by the laws of the States of United States is entitled to priority." With this view I cannot concur. Revised Statutes, Section 3466, was enacted in 1797, amended in 1799, and has never since been changed. Is it to be broadened by implication to include debts incurred in purely commercial transactions in which the United States has abandoned its sovereign character?

In the recent case of Krichman vs. United States, 41 Sup. Ct. 514, the Defendant was indicted for offering a bribe to a Railroad porter employed on the Pennsylvania Railroad while it was under Federal control, the indictment being under Section 39 of the Criminal Code of the United States, making it an offense to offer a bribe to an officer of the United States, or to a person acting for or on behalf of the United States in an official function under or by the authority of a department or office of the government. The Supreme Court held that the indictment would not lie. In considering the Statute creating the offense, the Court said:

"The Statute creating the offense was passed long before there was any thought of the government taking over the railroads. That does not prevent its application if the thing done offends against it. It is, however, a circumstance proper to be considered in determining whether the situation is one intended to be dealt with by Congress."

In the present case the Statute relied upon to sustain the claim for priority was passed more than a century ago and has remained practically unmodified. The language quoted above applies with equal force in consideration of the question involved here.

An examination of the Proclamation and Acts of Congress relating to Federal control shows that, while the control by the govern- [fol. 8] ment was absolute, it extended only so far as to give "complete possession by governmental authority to replace, for the period of the war, the private ownership theretofore existing." (Northern Pacific Railway vs. North Dakota, 250 U. S. 135).

While all the earnings of the railroad were by the Act expressly made the property of the United States, this was only "for the purpose of enabling the United States to perform the obligations that it assumed and to secure it from ultimate loss." Ibid. In constru-

ing the Federal Control Act, the Supreme Court, in the case of Missouri Pacific Railroad vs. Ault, 256 U. S. 554, says:

"The plain purpose of the above provision was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the President, except in so far as such rights and remedies might interfere with the needs of Federal operation * * *. The substantial legal rights of persons having dealings with the carriers were not to be affected."

It is clear that to give the United States priority in cases such as the present would interfere with the substantial legal rights of the public.

As a general proposition when the government enters into commercial business it is to be treated as any other private citizen.

United States vs. Planters Bank, 9 Wheat. 904; Salas vs. United States, 234 Fed. 842; Pope vs. United States Shipping Board, 269 Fed. 319; United States vs. Strang, 254 U. S. 494.

Under the construction of the Federal Control Act, in the cases of Northern Pacific Railway vs. North Dakota, and Missouri Pacific Railway vs. Ault, and United States vs. Strang above referred to, it is clear that it was never the intention of Congress, in taking over the railroads, to extend the power and prerogatives of the United States as a sovereign beyond that which was essential to prevent interference with their uninterrupted operation for war purposes. When we [fol. 9] consider the decisions with reference to the United States Shipping Board Emergency Fleet Corporation, this becomes all the more evident. It is true that the war powers of the United States with reference to ocean transportation were handled through a corporation in which all of the stock was owned by the United States, whereas with reference to land transportation they were handled through the Director General of Railroads. Each, however, in spite of differences as to legal status, was the agency adopted by the government for the conduct of certain necessary commercial enterprises under its war powers.

It would indeed be anomalous if it should be held that the government had priority as to debts for freight charges earned in land transportation, but had no such priority with reference to freight charges earned in ocean transportation. And yet, such would be the case if the contention of the government is sustained here.

In the case of United States Emergency Fleet Corporation vs. Wood, 42 Sup. Ct. 386, decided on May 1st, 1922, the Court holds point blank that, in spite of the exclusive ownership by the United States, the Fleet Corporation stood like other creditors and was not to be preferred. The language of the Chief Justice in an opinion concurred in by Justices Van Deventer and Clarke, which concurs with the main opinion of the Court in the result as to this question, is most significant on the particular point involved here. The opinion in this case really involves the decision of three separate cases against the Emergency Fleet Corporation. The main opinion

by Justice Holmes decided that suits against the Fleet Corporation were not suits against the United States. The concurring and dissenting opinion of the Chief Justice holds that suits against the Fleet Corporation should be regarded as suits against the United States. Nevertheless, and in spite of this view, the Chief Justice concurs in the majority opinion denying priority for claims of the Fleet Corporation in Bankruptcy, and, while he does not cite the case of Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., above referred to, his reasons for reaching this conclusion coincide exactly with the reasoning of the Supreme Court in that case, Says the Chief Justice:

"As to the preference claimed against a bankrupt estate in No. [fol. 10] 526 by the Fleet Corporation, I concur in the conclusion of the Court that it cannot be allowed under the Statute as to preferences in Bankruptcy, because I do not think that it extends to claims of the United States except those for taxes."

The government relies upon two decisions of the Circuit Court of Appeals as conclusive of its claim: In re Hibner Oil Company, 264 Fed. 667; Davis vs. Pullen, 277 Fed. 650.

At first glance both of these cases would seem to be conclusive of the question involved. Upon closer examination, however, in the light of the cases above referred to, neither the Hibner case nor the Pullen case can be considered as controlling authority on the point involved here.

In the Hibner case the only question considered by the Court was whether a claim for freight charges constituted a debt due the United States. No question appears to have been made in that case as to the right of the United States to priority, nor was the decision of the Supreme Court concerning the effect of the Bankrupt Act of 1898 on the right of the government to priority as to claims other than taxes (Guarantee Title & Trust Co., Trustee vs. Title Guarantee & Surety Co., supra) even considered. The Court said:

"If the claim is 'property' and constituted a debt due to the United States then concededly its priority was properly found * * *. The claim for freight charges is 'property' derived from the operation of the carrier during Federal control and is thus 'property' of and therefore a debt due to the United States. As such it was entitled to the priority as found."

There is of course no doubt but that the freight claimed is a debt due the United States (Northern Pacific Railway vs. North Dakota—250 U. S., 135; Missouri Pacific Railway vs. Ault—256 U. S. 554.) It by no means follows, however, that it is "as such" entitled to priority. On the contrary, the decisions referred to above show clearly that it is not.

[fol. 11] In the case of Davis vs. Pullen, a creditors' bill had been filed and a Receiver appointed for a corporation thought to be temporarily embarrassed, but which turned out to be insolvent. The Director General filed a claim with the Receiver for freight charges

accruing during the period of Federal control, and contended that this claim was entitled to priority under Revised Statutes, Section 3466, as debts due the United States. The main question involved was whether the appointment of a Receiver constituted an act which would bring into operation the provisions of Section 3466 of the Revised Statutes relative to debts due the United States. Both the Master and the District Court held that the case was not a bankruptcy or insolvency proceeding within the meaning of Section 3466. The holding of the lower Court was reversed.

The Court further considered the questions:

(a) Whether the freight claims were debts due the United States.

(b) Whether, if debts due the United States, they were entitled to priority.

Basing its decision on the Hibner case and on the Supreme Court decisions in Northern Pacific Railway vs. North Dakota, supra, and Missouri Pacific Railway vs. Ault, supra, the Court held the claims to be debts due the United States.

On the question of priority, the Court decided in favor of the contention of the government, basing its decision on the following cases: United States vs. National Surety Co., 254 U. S., 73; Marshall vs. New York, 254 U. S., 380; Lewis vs. United States, 92 U. S. 618; United States vs. Barnes, 31 Fed. 705; United States vs. State Bank of North Carolina, 6 Pet. 29; New Jersey vs. Anderson, 203 U. S. 483; Richmond vs. Bird, 249 U. S., 174; Pennsylvania Cement Co. vs. Bradley Contracting Co., 274 Fed. 1003; In re: Hibner Oil Co., 264 Fed. 667.

Under these decisions it says:

[fol. 12] "In the light of these authorities we must hold the Statute (i. e. Revised Statutes, Section 3466) applicable to all debts due the United States."

It is significant that the Court, in reference to the contention of the Receiver that, even if the freight claims were debts due the United States, nevertheless such claims were not entitled to priority within the meaning of the Statute used the following language:

"There is a certain obvious injustice in giving the United States, when engaged in an industrial and commercial venture, even although under war powers, superior rights over other creditors bearing like relations to insolvents."

It is a remarkable fact that the Court entirely overlooked the Supreme Court decision in the case of Guarantee Title & Trust Co., Trustee vs. Title Guarantee & Surety Co., 224 U. S. 152, and the decision of the Circuit Court of Appeals for the Fourth Circuit in the case of Lott vs. Salsbury, 237 Fed. 191, referred to above. The only apparent reason for so obvious an omission is that the Pullen case was not a proceeding in Bankruptcy, and that the Bankrupt Law, therefore did not apply. If this was the reason for the omis-

sion, the logical conclusion would be that the Pullen case is not to be taken as authority in construing Section 3466 as applied to proceedings in Bankruptcy. In other words, even if Section 3466 applies to all debts due the United States, that Section is not to be given this extended construction when the question arises in a bankruptcy proceeding where the controlling authority with reference to debts due the United States is no longer Section 3466 of the Revised Statutes but the Bankrupt Act of 1898.

Apart from that view, however, it seems to me that the decisions relied upon in the Pullen case do not sustain the conclusion there reached that Section 3466 is applicable to "all debts due the United States," so as to include a claim for freight charges earned in the operation of the Railroads by the government under its war powers and in pursuance of the Federal Control Act and the Proclamations issued by the President.

The case of the United States vs. National Surety Co., 254 U. S. [fol. 13] 73, arose out of Bonds given to secure contracts entered into by a contractor with the United States. The contractor defaulted, and the United States, having lost thereby Thirteen Thousand Dollars ($13,000.00), the Surety Company paid to the government on account of this loss Three Thousand One Hundred Fifty Dollars ($3,150.00). Both the United States and the Surety Company proved their claims in the Bankruptcy proceedings, the government claiming priority over all creditors under Revised Statutes, Section 3466, and the Surety Company claiming a like priority by subrogation under Revised Statutes, Section 3468, providing that, when a surety pays to the United States money due upon a bond, such Surety is subrogated to the claims of the United States. The Court held that the United States was entitled to priority for its whole debt as against the Surety Company.

It is true that language is used in the opinion of the Court which, considered alone, gives to Revised Statutes, Section 3466, the same broad scope that it had prior to the Bankrupt Act of 1898. Taken together with the decision of the Supreme Court in the case of Guarantee Title & Trust Company, Trustee, vs. Title Guarantee & Surety Company, supra, however, this language must be construed in the light of the fact that the only question being considered by the Court was the relative meaning of Section 3466 and Section 3468 without reference to the effect of the Bankrupt Act of 1898 on the scope of these Sections, and certainly throws no light on the question in issue here.

The case of Marshall vs. New York, 254 U. S., 380, was a suit in equity against a corporation, in which the State of New York claimed priority as to certain franchise taxes and license fees. The sole question involved in the case was as to the prerogative right of the State as a sovereign to claim priority over all its subjects in the payment of debts due it. The only debts involved in the case were taxes, and the decision is based on the sovereign common law right of the State, independent of all Statutes.

The case of Lewis, Trustee vs. United States, 92 U. S. 618, involved the question of priority as to claims of the United States

against the individual members and the firm of Jay Cook & Com-
[fol. 14] pany, Bankrupt, for moneys which the United States had placed in the hands of the firm for disbursement. The fundamental decision in this case was that the then existing Bankruptcy Act (i. e. Bankrupt Act of 1867) in no wise bound the United States, so that Section 3466 of the Revised Statutes was without qualification. Since the Bankrupt Act of 1898, however, Section 3466 of the Revised Statutes is qualified and controlled by the latter Act, as has already been noted in the discussion of the case of Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., supra, in which decision the Lewis case was fully discussed. Since the case of Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., therefore, the Lewis case can no longer be regarded as controlling authority even as to the construction of Section 3466 of the Revised Statutes.

The decision in the United States vs. Barnes, 31 Federal 705, related to the priority of a judgment under the Customs Revenue Laws against the Bankrupt and is based directly on the case of Lewis vs. United States, supra.

In the case of United States vs. State Bank of North Carolina 6 Pet. 29, the question involved was whether, under the Revised Statutes, Section 3466, the priority given to the United States applied to a Bond which did not become due until after the General Assignment for the Benefit of Creditors. The Court held that it did apply. There was no question in this case under any Bankrupt Act.

In the case of New Jersey vs. Anderson, 203 U. S. 483, the question involved was whether a license fee imposed by a State on corporations organized under its laws was included in Section 64 (a) of the Bankrupt Act of 1898 giving priority to taxes due a State. This case is therefore no authority on the question involved here.

In the case of Richmond vs. Bird, 249 U. S. 174, the question was as to the priority of a claim of the City of Richmond for taxes as against the claim of a landlord who had distrained for rent. The Court held that as under the laws of Virginia no superior right was given the City's unsecured claim for taxes, the landlord's claim was entitled to priority.

In the case of Pennsylvania Cement Co. vs. Bradley Contracting Co., 274 Fed. 1003, Receivers appointed in a suit in equity de-
[fol. 15] sired to declare a dividend and filed a Petition for instructions as to the attitude of the government regarding taxes under the Income Tax Law. The Court held that it had no power to compel the government to declare its attitude upon the subject, and the Receivers were instructed to pay no dividend until further ordered.

The case of In re: Hibner Oil Co., 264 Fed. 667, has already been referred to. It will thus be seen that of the nine cases relied on for the decision of the Court in the Pullen case, four involved the question of taxes, one Customs Revenue, one the recovery of money deposited by the government with the Bankrupt, one the right to priority on a Custom House Bond, the case not being in Bankruptcy, one the relative rights of the United States and of a Surety Com-

pany under Section 3468 of the Revised Statutes, and, in the last (In re Hibner), the question of priority was not raised. Necessarily the language used by the Court in these cases must be referred to the question at issue and under consideration, and I am forced to the conclusion, with all deference to the learned Court of Appeals, that the decision in the Pullen case is sustained neither by reason nor by the authorities relied on by the Court, and is not in harmony with the decision of the Supreme Court above referred to.

It is therefore ordered that the petitions for priority be and they are hereby dismissed.

Lionel K. Legge, Special Referee.

Charleston, S. C., August 21, 1922.

In United States District Court

[Title omitted]

Amended Proof of Preferred Debt

At Charleston, South Carolina, in the Eastern District of South Carolina on the — day of ——, 1922 came H. G. Glaiber, (formerly [fol. 16] agent of the U. S. Railroad Administration) of Charleston, in the County of Charleston in said District of South Carolina, and made oath, and says that Charles F. Boyd & Company, the corporation against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to the United States in the sum of Two Thousand, Two Hundred and Seven 43/100 Dollars; that the consideration of said debt is as follows: Freight, storage and demurrage on shipments of ground hulls from Willich & Company, New Orleans, La., to Charles F. Boyd & Company, on Dec. 26, 1918, as follows:

Freight	$132.44
158 days storage	1,580.00
Demurrage	570.00
War Tax	68.47
Total	$2,350.91
Amt. realized from sale	143.48
Balance due	$2,207.43

that no part of said debt has been paid, that the ground of preference is the sovereignty of the Creditor; that there are no set-offs or counterclaims to the same and that said United States has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment

rendered thereon to the best of deponent's knowledge, information and belief.

H. G. Glaiber.

Subscribed and sworn to before me this 28th day of June, 1922. T. Charles Siebert, Notary Public. (Seal.)

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS TO AMENDED PROOF OF PREFERRED DEBT

And now comes E. H. Pringle, Trustee of the above named Bankrupt and objects to the filing and allowance of Amended Proof of Preferred Debt subscribed and dated the 28th day of June, 1922, and filed herein on the 2nd day of February, 1923, by H. G. Glaiber, formerly agent of the United States Railroad Administration, on the following grounds:

1. Because it does not appear that H. G. Glaiber is now agent of the United States Railroad Administration and has any power or authority to execute or file any claim on behalf of the United States Railroad Administration or other department of the United States Government.

2. Because more than a year has elapsed since the adjudication in bankruptcy of the above named bankrupt and the time for the filing of claims has elapsed and it is now too late to filed the same.

3. Because the alleged Amended Proof of Debt is not sufficiently itemized or in proper form.

4. Because the alleged claimant is not entitled to priority or preference in the payment of said debt as a matter of law.

5. Because the Railroads of the United States have been turned back by the United States Government to the Companies operating [fol. 18] the same prior to the period of Government control and the period of Federal control and operation has ceased and all matters have been settled between the United States and the owners of the Railroads.

Mitchell & Horlbeck, Attorneys for Trustee in Bankruptcy.

Charleston, S. C., February 10, 1923.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF UNSECURED DEBT

At Washington, District of Columbia, on the 21st day of February, A. D. 1923 came James C. Davis, duly appointed and qualified Director General of Railroads and made oath and says that Charles F. Boyd and Company, the Corporation by or against whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition and still is justly and truly indebted to the United States Railroad Administration, the Director General of Railroads in the sum of Two Thousand Two Hundred and Seven and 43/100 Dollars ($2,207.43); that the consideration of said debt is as follows: Freight, storage and demurrage on shipments of ground hulls from Willich & Company, New Orleans, La., to Charles F. Boyd & Company, on December 26, 1918 as follows:

Freight	$132.44
158 days storage	1,580.00
Demurrage	570.00
War Tax	68.47
Total	$2,350.91
Amt. realized from sale	143.48
Balance due	$2,207.43

[fol. 19] that no part of said debt has been paid; that there are no set-offs or counterclaims to same and that deponent has not nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt and no judgment rendered thereon as deponent verily believes.

Preference is claimed for the debt under the authority of Sections 3466 and 3467 of the Revised Statutes of the United States.

James C. Davis, Director General of Railroads.

Subscribed and sworn to before me this 21st day of February, A. D. 1923. W. B. Robinson, Notary Public in and for the District of Columbia. (Seal.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF SPECIAL REFEREE—March 5, 1923

On consideration of the amended proofs of debt filed herein by or on behalf of James C. Davis, Director General of Railroads in reference to the Seaboard Air Line Railway claims and the objections on

behalf of the Trustee in Bankruptcy and after hearing argument of counsel for all parties, it is ordered that the said claims be admitted to file as an amendment to the claims heretofore filed herein on [fol. 20] behalf of the Director General with reference to the Seaboard Air Line Railway claims.

The question of the priority claimed by the Director General has already been passed upon by the order of the Referee dated the 21st day of August, 1922, from which order no exceptions were taken on this claim and this question therefore is not now properly before the Referee for determination, and it is so ordered.

Lionel K. Legge, Special Referee.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AN ORDER EXTENDING TIME TO FILE PETITION FOR REVIEW

To the Honorable Henry A. M. Smith, Judge of the said Court:

The Petition of James C. Davis, as Federal Agent and Director General of Railroads of the United States Railroad Administration respectfully shows unto this Honorable Court as follows:

That a claim was filed in these proceedings on or about September 28th, 1920 on behalf of Seaboard Air Line Railway Company for freight, storage and demurrage on shipments of ground hulls from Willich & Company, New Orleans, Louisiana, to Charles F. Boyd & Company in the amount of Two Thousand, Two Hundred and Seven and 43/100 ($2,207.43) Dollars, and that subsequently on or about the 6th day of February, 1922 it was requested on behalf of the Sea- [fol. 21] board that the Referee list this claim among those entitled to preference on the ground that same was a claim on behalf of the Director General of Railroads. That on the 21st day of August, 1922, L. K. Legge, Esq., Special Referee, made an order in which he found that this claim was not entitled to priority as being a claim of the United States Government. That thereafter a question having been raised as to the propriety of the execution of the claim, an amended claim was filed on or about February 3, 1923, which claim was executed by H. G. Glaiber formerly Agent of the United States Railroad Administration, and a question having arisen as to the propriety of the execution of this claim, a second amended claim was filed on or about the 27th day of February, 1923 executed by James C. Davis, Director General of Railroads, personally claiming on behalf of the Railroad Administrations the same items as are hereinabove set out, and claiming priority for the payment thereof. That the question of the allowance of priority to this claim having arisen at a hearing before the Referee, said Referee made a second order dated March 5, 1923, permitting the claim to be admitted to file as an amendment

to the claims theretofore filed as herein set out, but finding that the question of priority claimed by the Director General had already been passed upon by him in his Order dated August 21, 1922, from which order no exceptions had been taken on this claim.

That the failure to file exceptions to the Referee's Report dated August 21, 1922 was due to a misunderstanding as to what Counsel was charged with the duty of filing the same, but that Petitioner has good and valid grounds for excepting to this Report and for claiming that the claim herein referred to is entitled to priority.

Wherefore, Petitioner prays that this Honorable Court will make an order enlarging the time within which Petitioner may file a Petition for Review of the said Order of the Referee dated August 21, 1922.

And your Petitioner will ever pray etc.

Augustine T. Smythe, Attorney for Petitioner.

[fol. 22] Sworn to by Augustine T. Smythe; jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME

That the time for filing a petition to this Court for a review of the order of the Referee dated 21 August, 1922, be extended until 29th March, 1923.

Henry A. M. Smith, U. S. District Judge.

19 March, 1923.

IN UNITED STATES DISTRICT COURT

PETITION FOR REVIEW OF REFEREE'S ORDER

To the Honorable Henry A. M. Smith, Judge of the said Court:

The Petition of James C. Davis as Federal Agent and Director General of Railroads of the United States Railroad Administration respectfully shows unto this Honorable Court as follows:

1. That heretofore there was filed on behalf of the Director General of Railroads of the United States Railroad Administration, [fol. 23] Proof of Debt in the amount of Two Thousand, Two Hundred and Seven and 43/100 ($2,207.43) Dollars for freight, storage and demurrage accrued against the bankrupt, while Seaboard Air Line Railway Company was being operated under Federal control, and that there was also filed a claim for priority in the payment of this amount on the ground that the same was a claim of the United States Government. And thereafter said Proof of Debt and Claim

for Priority came before Lionel K. Legge, Esq., as Special Referee to inquire into and report upon the same.

2. That said Special Referee heretofore filed an Order dated August 21, 1922, in which he disallowed the claim of petitioner for priority in payment of said claim as aforesaid.

3. That thereafter, to-wit, on February 27, 1923, Petitioner filed with the said Lionel K. Legge an amended Proof of Claim and claim for priority, and that thereafter the said Special Referee made an Order dated March 5, 1923, ordering that such claim be admitted to file as an amendment to the claim heretofore filed on behalf of the Director General with reference to Seaboard Air Line Railway Company, but ruled that the question of the priority claimed by the Director General had already been passed upon by his Order dated August 21, 1922.

4. That such Order dated August 21, 1922, is erroneous upon the following grounds:

(a) The Special Referee erred in holding that the claim of the Petitioner for freight, storage and demurrage was not a claim of the United States and entitled to priority under the provisions of Sections 3466 and 3467, Revised Statutes of the United States.

(b) The Special Referee erred in holding that the claim of Petitioner for freight, storage and demurrage was not a preferred claim and entitled to priority under the provisions of the Bankrupt Act of Congress.

[fol. 24] 5. And your Petitioner alleges that as to both grounds the Special Referee was in error because it is undisputed that during the time when said freight, storage and demurrage accrued, Seaboard Air Line Railway Company was being operated by the Director General under Federal control; that the revenue arising therefrom became the property of the United States under legislation adopted by Congress, and that the bankrupt estate is therefore responsible to the proper representatives of the United States for all such unpaid charges in priority to the other creditors.

Wherefore, Your Petitioner feeling aggrieved because of such Order, prays that the same may be reviewed as provided in the Acts of Congress relating to bankruptcy and General Order No. 27.

Augustine T. Smythe, Attorney for Petitioner.

Sworn to by Augustine T. Smythe; jurat omitted in printing.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONFIRMING REFEREE'S ORDER—January 15, 1924

This matter came on to be heard upon the Special Referee's Certificate filed 26 March, 1923, and the petition for review of the

Special Referee's order dated 21 August, 1922, and the other papers attached to the certificate, and counsel for the Trustee in Bankruptcy and the petitioner James C. Davis, Federal Agent, have been heard.

The sole question is whether the claims preferred by the petitioner, James C. Davis, Federal Agent, are entitled to priority over all other claims under the provisions of Section 3466 of the Revised Statutes. In the opinion of the Court the provisions of Section 3466 do not apply to the claims of the petitioner. That Statute contemplates debts to the United States accruing to it directly under any statutory or contractual directions. The present claims do not fall into those categories. They are claims arising only incidentally to the temporary operation by the Government of the plant of a transportation corporation, operated by the Government in like manner as it would have been operated by the corporation itself had the Government not taken possession. The very description of the claims shows this. They are all for freight, storage and demurrage charges on merchandise transported as shipped by private parties. The Government in possession of the Railway plant of a corporation under- [fol. 26] took the commercial transportation of articles shipped by private persons in like manner as the same were transported by the corporation when in possession of the Railway plant and lines. For all these charges the Government Agent has a lien upon the articles transported. It was the duty of that Agent to have collected all these charges before delivery of the articles to the consignees. Having seen fit to waive that lien and deliver the articles to the consignee without collecting the charges for which he had a lien the Agent of the Government under the circumstances of this case is not entitled to a prior lien upon the general estate of the bankruptcy consignee.

It is therefore,

Adjudged That the order of the Special Referee, Lionel K. Legge, Esq., made and dated 21st August, 1922, be, and the same is hereby approved and confirmed.

Henry A. M. Smith, United States Judge.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE RECORD—February 25, 1924

It appearing that the record on appeal in the above case will not be completed in time for filing with the Clerk of the Court of Appeals as required by the Rule, it is:

Ordered, That the time for filing the record be extended thirty days from this date.

Ernest F. Cochran, United States Judge.

[fol. 27] IN UNITED STATES DISTRICT COURT

ORDER FURTHER EXTENDING TIME TO FILE RECORD—March 24, 1924

It appearing that the record on Appeal in the above case will not be completed in time for filing with the Clerk of the Circuit Court of Appeals on 25th instant, it is:

Ordered, That the time for filing the record be extended twenty days from this date.

Henry A. M. Smith, United States Judge.

IN UNITED STATES DISTRICT COURT

ORDER FURTHER EXTENDING TIME TO FILE RECORD—April 12, 1924

It appearing that the record on Appeal in the above case will not be completed in time for filing with the Clerk of the Circuit Court of Appeals on 13th instant, it is:

Ordered, That the time for filing the record be extended ten days from this date.

Henry A. M. Smith, United States Judge.

IN UNITED STATES DISTRICT COURT

ORDER RE TRANSCRIPT OF RECORD

By consent of counsel in this case:

It is ordered, That the record on appeal to the Circuit Court of Appeals, from the Order of this Court, dated January 15th, 1924, shall consist of the following papers:

1. Original proof of unsecured debt of Seaboard Air Line Railway Company, filed September 28, 1920.

[fol. 28] 2. Letter of Buist & Buist, District Counsel to L. K. Legge, Referee dated February 6th, 1922.

3. Order of Lionel K. Legge, Special Referee, dated August 21st, 1922.

4. Proof of preferred debt, dated June 28th, 1922, filed February 3rd, 1923.

5. Objections of Trustee in Bankruptcy, filed February 10th, 1923.

6. Proof of claim of James C. Davis, Director General, dated February 21st, 1923.

7. Order of L. K. Legge, Referee, dated March 5th, 1923.

8. Petition for review of Referee's order dated March 19th, 1923.

9. Petition and order extending time for review dated March 29th, 1923.

10. Order of Judge Smith, dated January 15th, 1924.

11. Petition for appeal, assignment of errors and order of Judge Smith allowing same, dated January 23rd, 1924.

It is further ordered, That no bond be required of the appellant in connection with this appeal.

It is further ordered, That the time within which the præcipe may be filed shall be and the same is hereby extended through the day of the date of this order and that this order shall constitute and stand as such præcipe.

Henry A. M. Smith, U. S. Judge.

18 March, 1924.

[fol. 29] We consent. Augustine T. Smythe, Attorney for James C. Davis, Federal Agent, Appellant. Mitchell & Harlbeck, Attorneys for Ernest H. Pringle, Trustee, Respondent.

IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va., and that it be printed under the supervision of the Clerk of that Court in accordance with Rule 23.

Augustine T. Smythe, Counsel for Appellant. Mitchell & Horlbeck, Counsel for Appellee.

Charleston, S. C.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS

Now comes James C. Davis, Federal Agent for claims due in operation of Seaboard Air Line Railway Company and files this his assignment of errors as to the order of this Court made and filed in this matter on January 15, 1924, complaining as follows:

1. Because his Honor the District Judge erred in holding that the provisions of Sections 3466 and 3467 of the revised statutes do not apply to the claims in question.

2. Because his Honor the District Judge erred in holding that the [fol. 30] claim of the petitioner for freight, storage and demurrage is not a claim of the United States and entitled to priority under the provisions of Sections 3466 and 3467 of the revised statutes.

3. Because his Honor the District Judge erred in holding that the claim of the petitioner for freight, storage and demurrage is not a preferred claim and entitled to priority under the provisions of the Bankrupt Act.

4. Because his Honor the District Judge erred in finding that the government agent, the petitioner, waived the lien which he had on the goods in question for the carriage and storage of the same.

James C. Davis, Federal Agent, for Claims Due in Operation of Seaboard Air Line Railway Company, by Alex. Koplin, Augustine T. Smythe, His Attorneys.

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Richard W. Hutson, Clerk of the District of the United States for the Eastern District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Charles F. Boyd Company, Inc., Bankrupt, Ex Parte James C. Davis, Federal Agent for claims due in operation of Seaboard Air Line Railway Company, as appears by the original record now on file in my office and as directed by order in lieu of Præcipe.

Given under my hand and the seal of said Court at Charleston, in the District aforesaid, this 16th day of April, A. D. 1924.

Richd. W. Hutson, C. D. C. U. E. D. S. C. (Seal.)

31 PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 2246

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Seaboard Air Line Railway Company, appellant

vs.

E. H. PRINGLE, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF Charles F. Boyd Company, Inc., Bankrupt, appellee

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON

April 19, 1924, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, and citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of Augustine T. Smythe and Alex Koplin is entered for the appellant.

May 1, 1924, the appearance of Nath. B. Barnwell and F. H. Horlbeck is entered for the appellee.

32 May 2, 1924, twenty-five copies of the printed record are filed.

Argument of Cause

June 12, 1924 (June Term, 1924), cause came on to be heard, together with No. 2245, before Woods and Waddill, Circuit Judges, and Webb, District Judge, and is argued by counsel and submitted.

33 *Opinion*

Filed September 29, 1924

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2246

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Seaboard Air Line Railway Company, appellant

vs.

E. H. PRINGLE AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF Charles F. Boyd Company, Inc., Bankrupt, appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON. IN BANKRUPTCY

(Argued June 12, 1924. Decided Sept. 29, 1924)

Before WOODS and WADDILL, Circuit Judges, and WEBB, District Judge.

Alex Koplin, General Attorney for U. S. Railroad Administration, and Augustine T. Smythe (Lambert McAllister on brief) for appellant, and N. B. Barnwell (F. H. Horlbeck: Whaley, Barnwell & Grimball and Mitchell & Horlbeck on brief) for appellee.

34 WOODS, Circuit Judge:

This appeal involves the claim of the Director General to priority of the debt due by the bankrupt, accruing on the line of the Seaboard Air Line Railway Company during Federal control. The questions made are discussed and decided in the opinion filed this day in No. 2245, *Davis, Federal Agent* vs. *E. H. Pringle, Trustee.* For the reasons therein stated the decree of the District Court must be

Affirmed.

Decree

Filed and entered September 29, 1924

ITED STATES CIRCUIT COURT OF APPEALS FOURTH CIRCUIT

No. 2246

IES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Seaboard Air Line Railway Company, Appellant

vs.

H. PRINGLE, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF Charles F. Boyd Company, Inc., Bankrupt, Appellee

EAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

his cause came on to be heard on the transcript of the record n the District Court of the United States for the Eastern District South Carolina, and was argued by counsel.

n consideration whereof, it is now here ordered, adjudged, and reed by this Court that the decree of the said District Court, in cause, be, and the same is hereby, affirmed with costs.

C. A. WOODS,
U. S. Circuit Judge.

EPTEMBER 29, 1924.

On another day, to-wit, October 30, 1924, the mandate of this Court in this cause is issued and transmitted to the S. District Court at Charleston, South Carolina, in due form. ame day, the original petition for appeal and order allowing eal are returned to the Clerk of the U. S. District Court at rleston, South Carolina.

Clerk's certificate

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 5th day of November, A. D. 1924.

[SEAL.]

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals,
Fourth Circuit.

[fol. 37] IN SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit

ORDER GRANTING PETITION FOR CERTIORARI—Filed March 2, 1925

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fourth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.